IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 4256 OF 2007

The Kannur Education society.... Petitioner

versus

Vasant B. Aaltekar & ors..... Respondent.

Shri Sanjeev Kadam for the petitioner
Shri G.M.Sargave for Respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 6TH JULY, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The Secretary of the society which is a public trust has filed the present writ petition challenging the order passed by the Deputy Charity Commissioner, rejecting an application filed by the present petitioner urging therein to reject/discard the affidavits filed by the respondent on record. The Deputy Charity Commissioner has rejected the application by holding that the petitioner could have cross examined the person who have filed affidavits but having failed to do so, the application for rejection of the affidavits cannot be favourably considered. The learned counsel for the petitioner

submits that the respondents who filed the affidavits did not submit themselves to the cross examination by remaining present before the Deputy Charity Commissioner and hence the petitioner could not cross examine the respondents.

3. Both the learned counsel are in agreemet that the persons who have filed the affidavits on behalf of the respondebnt in support of the application under section 41(A), will remain present before the Deputy Charity Commissioner and the managing committee members will be extended an oppportunity to cross examine the respondents touching the statements made in the affidavits. This course will advance cause of justice and enable the Deputy Charity Commissioner to adjudicate the dispute effectively and completely. Hence partly allowing the writ petition I clarify that respondents who have filed affidavit shall present themselves before the Deputy Charity Commissioner so as to enable the petitioner to cross examine them touching the statements made in the affidavit. The same course will be followed when the respondent in original application under section 41(A) files affidavit by way of examination -in-chief. Rule made absolute in the above terms.

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